

MINUTES

TENNESSEE BOARD OF MEDICAL EXAMINERS

JANUARY 20 AND 21, 2004

The meeting was called to order at 8:45 a.m. in the Cumberland Room, Ground Floor of the Cordell Hull Building, 425 5th Avenue North, Nashville, Tennessee 37247-1010, by Vice-President Nina Yeiser. Other members present were: Drs. George Eckles, Barbara Englehardt, Charles White, Sam Barnes, Allen Edmonson, Robert Ripley, David Cunningham, Mitchell Mutter, Ms. Mary Johnson and Mr. Mark Brown. Absent member was Dr. Travis Bolton. Staff present included: Rosemarie Otto, Executive Director, Marsha Arnold, Unit Manager, Sandra Powell, Administrator, Dr. Larry Arnold, Board Consultant, and Robert Kraemer, Advisory Attorney.

Minutes

Minutes from the November 18 and 19 and December 16, 2003 meetings were reviewed. Dr. Edmonson made a motion to approve the minutes and the motion was seconded by Dr. Mutter. The motion carried unopposed.

Ratification of Licenses

New, reinstated, failed to renew and voluntarily retired licenses for Medical Doctors were reviewed by the Board. Ms. Powell added David Anderson Beaird to the listing. Dr. Edmonson suggested putting in the newsletter information to encourage licensees to voluntarily retire their license instead of letting them go to a failure to renew status. Dr. Eckles made a motion to ratify the approvals and the motion was seconded by Dr. White. Dr. Englehardt made a motion to ratify the approval of licenses for the Physician Assistants. Dr. Edmonson seconded. The motion carried unopposed.

Ms. Johnson made a motion to approve licenses for the Athletic Trainers and Medical X-Ray Operators and Ms. Yeiser seconded the motion. Dr. Eckles made a motion to approve the licenses for Clinical Perfusionists and Dr. Mutter seconded the motion. The motion carried unopposed.

New Applicant Interview

Nils Anderson, MD

Dr. Anderson is applying for a telemedicine license to practice in Tennessee. Dr. Arnold reviewed Dr. Anderson's application with the Board and stated that Dr. Anderson was not eligible for a telemedicine license. Dr. Anderson stated he had set for part one of the test of the American Board. After further discussion, Ms. Yeiser's suggestion to Dr. Anderson was to withdraw his application and come back when all requirements have been met. Dr. Anderson's decision was to withdraw his application at this time.

Dr. David Boike, MD

Dr. Boike is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Boike's application file for the Board. Dr. Boike brought charts for the Board to review. The Board suggested that Dr. Arnold review the charts before a decision could be made. Dr. Boike decided to withdraw his application and come back at a later date.

William A. Dodson, MD

Dr. Dodson is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Dodson's application file and requested Dr. Dodson to interview with the Board. Dr. Dodson has been board certified since 1990. After further discussion, Dr. Eckles made a motion to grant a license to Dr. Dodson and Dr. Mutter seconded the motion. The motion carried unopposed.

Steve Michael Covington, MD

Dr. Covington is applying for a Telemedicine license in Tennessee. Dr. Arnold reviewed Dr. Covington's application file with the Board. Dr. Edmondson asked Dr. Covington to explain about the malpractice suit and the two errors that were made. After further discussions, Dr. Barnes made a motion to grant a license to Dr. Covington. Dr. Edmonson seconded the motion. The motion carried unopposed.

Frederick Litton, MD

Dr. Litton is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Litton's application file with the Board. The Board asked Dr. Litton about his privileges in Virginia. After further questions, Dr. Mutter made a motion to grant a license to Dr. Litton and Dr. White seconded the motion. The motion carried unopposed.

Bruce H. Marko, MD

Dr. Marko is applying for a license to practice medicine in Tennessee. Dr. Marko wants to do hair restoration and office cosmetics. Dr. Arnold reviewed Dr. Marko's application file and stated that Dr. Marko had answered "no" to question five (5) on the application. Dr. Marko stated he had misunderstood the questions and would like to make the necessary corrections by answering "yes". Dr. Mutter made a motion to grant a license to Dr. Marko and Dr. Barnes seconded the motion. The motion carried unanimously.

Rajesh Puri, MD

Dr. Puri is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Puri's application file with the Board. Dr. Puri had previously been charged with Medicare billing fraud. Dr. Puri stated he would be working as an employee in a clinic. The Board asked Dr. Puri several questions pertaining to his previous unethical conduct and present ethical conduct. After further discussions, Dr. Ripley made a motion to grant a license to Dr. Puri and Dr. Eckles

seconded with the approval of Dr. Barnes, Mr. Brown, Dr. Engelhardt, Dr. White, Ms. Yeiser and Ms. Johnson. Dr. Mutter and Dr. Edmonson opposed the motion. The motion carried with five opposed.

Jennifer Pierce, MDX

Ms. Pierce was not present. Dr. Arnold reviewed Ms. Pierce's application file to practice as a limited X-Ray Operator in Tennessee. Dr. Englehardt made a motion to request the results of Ms. Pierce's drug screen and have Ms. Pierce appear back before the Board in March. Dr. Edmonson seconded. The motion carried unopposed.

Renewal Interview

Evelyn Cohen, MD

Dr. Cohen is renewing her license but checked "yes" to a question on the back of the renewal. Dr. Cohen had failed to correctly check a CT scan. After further questions, Dr. Mutter made a motion to renew Dr. Cohen's license. Dr. Edmonson seconded. The motion carried unopposed.

Ronald Fincher, MD

Dr. Fincher is returning because of the confusion with his renewal concerning his licensure status in Virginia, North Carolina, Arkansas and New York. Ms. Otto submitted an updated listing of actions in the other states. After further discussions, Dr. Edmonson moved to accept Dr. Fincher's renewal. Dr. Barnes seconded the motion with the approval of Dr. Eckles, Dr. Engelhardt, Dr. Ripley and Mr. Brown. Dr. Mutter, Dr. White, Ms. Yeiser and Ms. Johnson opposed the motion. The motion passed.

Rule Action

Jerry Kosten reviewed the Notice of Rulemaking Hearing that was held on December 12, 2003 pertaining to disciplinary proceedings. Mr. Kosten reported a few written comments were submitted. Dr. White moved to accept the rule as written and Ms. Yeiser seconded the motion. A roll call vote was conducted by Ms. Otto. The motion carried unopposed.

Mr. Kosten reported on the Office Based Surgery rules. Discussion began with the previous motion to remove the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) from the list of possible accrediting agencies. Mr. Kraemer stated the removal of JCAHO would leave only one accrediting agency. Dr. Edmonson made a motion to include JCAHO. The motion was adopted by the Board. Dr. Eckles reviewed and explained the Office Based Surgery document with the other Board members for suggestions and changes if necessary. Dr. Eckles stated he would change the word surgeon to physician throughout the document. Another suggestion was that anyone under two (2) years old would go to the hospital and anyone under the age of ten (10) would be considered under Level II. Dr. Cunningham suggested to the members to continue the discussion at the next scheduled meeting.

A discussion was conducted regarding the change in TCA 62-4-102 regarding use of non-ablative laser equipment. Ms. Otto stated that Ms. Bell had asked the Board for approval. Dr. White stated he did not have enough information to make a decision and suggested putting it on the agenda for the next meeting. After further discussion, Dr. Eckles made a motion to oppose the use of non-ablative laser equipment and Dr. Mutter seconded. The motion carried unopposed.

Appearances

Ms. Judy Eads, Assistant Commissioner of Health, gave a report on the audit findings which was conducted with the Government Operations Committee. Ms Eads stated there were nine (9) recommendations in which the main concern was the complaint process. Ms. Eads stated the department is working on the process to bring cases before the Board more quickly. Ms. Eads also reported that there was legislation in the works to require a background check done on applicants before licensure was granted.

Judy Harrick, Chairperson of the Acupuncture Advisory Council, addressed the Board asking for support in requesting a legal opinion to the Attorney General's office clarifying the wording of "puncture the skin" in the Chiropractic rules. Mr. Kraemer agreed to draft a letter and later in the meeting presented the Board with a copy for review. Dr. Barnes made a motion to accept the letter and Dr. White seconded. The motion carried unopposed.

Nick Aemisegger and Harry Weddle with the Office of General Counsel made a presentation to the Board. Mr. Aemisegger reported the activities of the Office of General Counsel. Mr. Weddle stated that the Office of General Counsel is working on a quality assurance survey which will be handed out to the Board members at the end of the hearings for feedback in how they are doing. The feedback will help the Office of General Counsel in improving their quality.

Joel Herring reported on the limited scope licensure exams for 2003 and provided copies of those results to the Board members. Ms. Otto advised she would submit a letter to all inactive course providers notifying that they will be purged off the list. The Board reviewed High Tech Institute's pass rate for the first half of 2003 and discussed the letter of response submitted by High Tech suggesting ways to improve. Lisa Beacon, from High Tech stated that they were not satisfied with the percentage and presented a plan of action to improve the scores. Dr. Cunningham asked Ms. Beacon the length of time it would take to improve the scores. Dr. Mutter's suggestion was to place High Tec on probation and give them six (6) months to increase their pass rate. Dr. White made a motion to give High Tech six (6) months to improve their pass rate. Dr. Mutter seconded. The motion passed.

Reports

Budget Report

Lisa Tittle of the Bureau Office reviewed the budget report. Ms. Tittle stated the Board has made progress in getting out of the red. Dr. Roland Gray of the Tennessee Medical Foundation (TMF) was present to address the Board in considering an increase in fees to the present contract. The increase would be reflected on the face of the application and renewal application. Ms. Yeiser

stated the Board would like to help, but at the present time, the additional funds are unavailable. Dr. Cunningham stated the Board would be able to help once this budget report was at a positive balance. Dr. White asked Ms. Tittle if the Board would be able to see the projection by the May meeting. Ms. Tittle stated the Board would be able to see the projection figures at that time and there is a positive outlook for 2004. After further discussion, Dr. Edmonson made a motion to ratify the continuation of the current contract with the Tennessee Medical Foundation. Dr. White seconded. The motion carried unopposed.

Director's Report

Ms. Otto reported that she and Dr. Arnold met with two (2) physicians that had board orders to appear before the Board, Dr. James Kennedy and Dr. Joseph Rich. These physicians remain with TMF advocacy. Ms. Otto reported that Dr. Bill McCord was formally nominated for the position of "Chair-elect" by the Osteopathic Board and had requested the Board of Medical Examiners endorse the candidacy of Dr. McCord. Dr. White made a motion to endorse Dr. McCord's nomination and Dr. Eckles seconded the motion. The motion passed unopposed.

Ms. Otto reported that the Federation of State Medical Boards will be holding its annual meeting in Washington D.C. on Thursday, April 29, 2004 through Saturday, May 1, 2004. Ms. Otto stated the Board would need to delegate a member to attend the meeting. The Board nominated Dr. Sam Barnes to attend and vote on its behalf.

Investigative Report

Denise Moran, Director for Investigations, reviewed the Report from the Bureau of Investigation and stated under the year-to-date section of the report that the number of complaints has increased. Ms. Moran stated the reports will be broken down by counties and that Knox and Hamilton county and surrounding areas have a large volume of complaints. Ms. Moran introduced Lea Phelps as the new Disciplinary Coordinator.

Disciplinary Report

Lea Phelps, Disciplinary Coordinator, reviewed the disciplinary report. Ms. Phelps reported there were fourteen (14) physicians under suspension, twenty-nine (29) on probation and seven (7) restrictions. Ms. Phelps stated out of fifty-six (56) monitoring, seventeen (17) were referred to the Tennessee Medical Foundation by Board order and four (4) of those were to maintain TMF advocacy.

Office of General Counsel Report

Bob Kraemer, the Medical Board's Advisory Attorney, gave his report to the Board. Mr. Kraemer reviewed the rules which are in effect. Mr. Kraemer stated there are eighty-two open cases at the present time. Dr. Mutter asked Mr. Kraemer if the seven (7) year rule is more restrictive than in the past and Mr. Kraemer stated it was less restrictive.

Dr. Englehardt made a motion to accept all reports and Ms. Yeiser seconded. The motion carried unopposed.

“Noteworthy” section for the Internet

The Board did not designate anything for the “Noteworthy” section of the Internet.

Adjourned for lunch at 12 noon

Reconvened in the Cumberland Room at 1:00 p.m.

Disciplinary Action

Cumberland Room

Panel: Drs. Englehardt, Eckles, Cunningham, and Ripley

Contested Case Hearing

John Crabtree, MD-Mr. Joseph Schmidt, counsel for the State, requested a continuance of Dr. Crabtree’s case until the next meeting date.

Robert Burkich, MD- Dr. Burkich was not present, nor represent by legal counsel due to illness. Mr. Robert O’Connell represented the State. The Honorable J. Randy Lefevor, Administrative Law Judge presided. Mr. O’Connell stated that Mr. Tommy Burnett, legal counsel for Dr. Burkich, had asked for a continuance on the case and to reset the hearing for the next scheduled meeting. Mr. O’Connell handed out the Notice of Charges to the panel for review. Dr. Cunningham stated he has no problem hearing Dr. Burkich’s case at a later date prior to the March meeting. Dr. Eckles made a motion to reschedule the hearing at a later date. Dr. Ripley seconded.

Agreed Order

Joanne Lynch, MD- Dr. Lynch was not present nor represented by legal counsel. Mr. Joseph Schmidt represented the State. Mr. Schmidt handed out the Notice of Charges and Agreed Order to the panel for review. Dr. Lynch was employed as a supervising physician at the In Shape Weight Loss Clinic in Tazewell, Tennessee. Dr. Lynch supervised two nurse practitioners at the clinic. Dr. Lynch failed to visit the office and develop clinical guidelines, including a method of documenting consultation and referral, in collaboration with both nurse practitioners. Dr. Lynch had terminated her relationship to the clinic. The Agreed Order states that Dr. Lynch’s license be placed on probation, commencing with the effective date of the Agreed Order, for a period of two (2) years. Dr. Lynch is ordered to attend and to successfully complete the three (3) day course entitled “Prescribing Controlled Drugs” sponsored by The Center for Professional Health, Vanderbilt University Center, within the probationary period of the Agreed Order. Dr. Lynch is ordered to pay the costs associated with the disciplinary action. Dr. Ripley stated there was a typographical error on the first page of the Order in which “his” is use instead of “her”.

Dr. Englehardt made a motion to accept the Agreed Order as written with the correction on the first page. Dr. Ripley seconded. The motion passed unopposed.

Letter of Reprimand

Anne Ostrosky, MDX- Ms. Ostrosky was not present nor represented by legal counsel. Mr. Bob O'Connell represented the State. Mr. O'Connell handed out the Letter of Reprimand to the panel for review. Ms. Ostrosky had been working as a medical x-ray operator since 2000 without a certification which is required by Tennessee. Ms. Ostrosky is now properly licensed by the State of Tennessee as a medical x-ray operator. Dr. Englehardt made a motion to accept the letter of reprimand and Dr. Ripley seconded the motion. The motion carried unopposed.

Adjourned at 2:05 p.m.

Magnolia Room:

Panel: Drs. Mutter, Edmonson, White and Ms. Yeiser

Agreed Order

Mark Robert Wade, MD-Dr. Wade was present and was represented by legal counsel, Mr. Dan Warlick. Ms. Shirley Corey represented the State. The Honorable Marion Wahl, Administrative Law Judge presided. Ms. Corey handed out the Notice of Charges and Agreed Order to the panel for review. Dr. Wade is charged with over-prescribing in which sixty-six (66%) percent of these prescriptions were for hydrocodone products, a schedule III controlled substance. Dr. Wade filled over 42, 750 dosage units of diazepam, a scheduled IV controlled substance. These prescriptions were written for four thousand, three hundred and forty-eight (4, 384) individuals residing all over the United States and abroad. The Agreed Order states that Dr. Wade's license will be suspended for ninety (90) days beginning February 20, 2004 and suspended for the entire period of incarceration if he is incarcerated in the federal conspiracy case. Dr. Wade's license will be reinstated at the end of the ninety (90) day suspension period during or after his incarceration, whichever period is the longer of the two, and there after, he will be placed on five (5) years probation. Dr. Wade must attend and participate in the University of Florida CARE Program (Comprehensive Assessment Remediation and Education) before December 31, 2004. He must attend and successfully complete forty (40) hours of Continuing Medical Education each year during the probationary period. Twenty (20) hours should be in prescribing practices and record keeping. Satisfactory participation is required and written reports shall be submitted to the Tennessee Board of Medical Examiners, Disciplinary Coordinator. Dr. Wade must pay a civil penalty in the amount of twenty-five Thousand Dollars (\$25, 000.00) and pay \$5,000 each year on or before December 31 of each year beginning in 2004, to the Tennessee Board of Medical Examiners, Disciplinary Coordinator. Dr. Wade must surrender his DEA to the appropriate authorities upon ratification of the Order by the Board. Dr. White moved to accept the Finding of Facts and Dr. Mutter seconded. The motion carried. Dr. Mutter made a motion to accept the Conclusions of Law and Dr. Edmonson seconded the motion. The motion carried. Dr. White made a motion to accept the order to protect the health, safety and welfare of the citizens of the State of Tennessee. Dr. Edmonson seconded. The motion carried.

Adjourned at 2:00 p.m.

Tennessee Room:

Panel: Brown, Johnson and Dr. Barnes

Contested Case Hearing

Ferris Hallmark, MD-This is a continued Contested Case.

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